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*The California Public Employees' Retirement System (CalPERS)*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	

**RESPONSE BY CALPERS TO MOTION BY THE DEBTOR FOR ENTRY OF AN  
ORDER AUTHORIZING, BUT NOT DIRECTING, THE DEBTOR TO CAUSE  
DISTRIBUTIONS TO CERTAIN “RELATED ENTITIES”**

The California Public Employees' Retirement System, a California public pension plan (“CalPERS”) hereby responds to Highland Capital Management, L.P.’s (“Debtor”) Motion for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain

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<sup>1</sup> The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

“Related Entities” (“Motion”) as set forth below. In sum, CalPERS does not object to the relatively narrow relief sought by the Debtor. Rather, CalPERS seeks clarification from and a commitment by the Debtor and Highland Restoration Capital Partners, L.P. (“RCP”) that they will promptly distribute to CalPERS its pro rata interest in RCP, in an amount not less than \$80,396,949, as discussed more fully below.

### **Pertinent Background Facts**

1. CalPERS is a limited partner of RCP, holding a 74.07 percent interest in the RCP partnership. On or about September 30, 2019, CalPERS entered into a Purchase and Sale Agreement (“PSA”) with the Debtor wherein the Debtor agreed to purchase CalPERS’ interest in RCP for a purchase price of \$80,396,949 (“Purchase Price”). A copy of the PSA is attached hereto as **Exhibit A**. The PSA was acknowledged and agreed to by RCP and its general partner Highland Restoration Capital Partners GP, LLC (“RCP GP”). Among other things, the PSA provided that the Purchase Price was to be paid by November 30, 2019.

2. Subsequent to the effective date of the PSA, the Debtor advised CalPERS that the Debtor had assigned its rights under the PSA to Highland Capital Management Services, Inc. (“HCM Services”). A copy of the Assignment and Assumption Agreement dated October 1, 2019, which the Debtor provided to CalPERS (“PSA Assignment”) is attached hereto as **Exhibit B**.

3. Neither the Debtor nor its apparent assignee HCM Services has timely performed under the PSA. To date, CalPERS has not received any part of the Purchase Price from the Debtor, HCM Services, or any other person or entity.

4. Upon receipt and review of the Motion, CalPERS sought from the Debtor, but did not receive, a commitment to make a distribution to CalPERS and an estimated amount of such distribution on account of CalPERS' interest in RCP.

**Request by CalPERS**

5. CalPERS simply requests that the Debtor, as manager of RCP, commit to a timeline for making distributions of sale proceeds and other cash held by RCP to CalPERS and other limited partners of RCP and similarly provide an estimate of the amount of each such pro rata distribution.

6. Given the existence of the PSA, which the Debtor and HCM Services have breached, CalPERS has a reasonable expectation of receiving not less than the Purchase Price, as set forth in the PSA.

7. As set forth in the Motion, CalPERS understands that the Debtor believes distributions to CalPERS and other non-“related entities” do not require prior authorization by the Bankruptcy Court. Further, CalPERS understands the Committee does not oppose such distributions to non-“related entities.” Thus, CalPERS' request herein, and the anticipated distribution to CalPERS and other non-“related entities” should not be contingent or dependent upon whether this Motion is granted or denied.

Respectfully submitted,

*[Remainder of Page Intentionally Blank]*

Dated: March 2, 2020

**SINGER & LEVICK**

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District and to the parties listed below via first class mail, postage prepaid, on this 2nd day of March 2020.

<p><b><u>Attorneys for Debtor:</u></b>  Jeffrey N. Pomerantz  Ira D. Kharasch  Maxim B. Litvak  Gregory V. Demo  Pachulski Stang Ziehl &amp; Jones LLP  10100 Santa Monica Blvd., 13th Floor  Los Angeles, CA 90067</p> <p>Melissa S. Hayward  Zachery Z. Annable  Hayward &amp; Associates PLLC  10501 N. Central Expressway, Suite 106  Dallas, TX 75231</p>	<p><b><u>Attorneys for Committee of Unsecured Creditors:</u></b>  Michael R. Nestor  Edmon L. Morton  Sean M. Beach  Jaclyn C. Marasco  Young Conaway Stargatt &amp; Taylor, LLP  Rodney Square  1000 North King Street  Wilmington, Delaware 19801</p> <p>Penny P. Reid  Paige Holden Montgomery  Juliana Hoffman  Sidley Austin LLP  2021 McKinney Avenue, Suite 2000  Dallas, Texas 74201</p>
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/s/ Michelle E. Shriro  
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